

**Introduced by Senator Simitian**February 17, 2005

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An act to amend Section 25214.10 of the Health and Safety Code, and to amend Sections 42476.5 and 42479 of, and to repeal Section 42476.6 of, the Public Resources Code, relating to electronic waste.

## LEGISLATIVE COUNSEL'S DIGEST

SB 423, as introduced, Simitian. Electronic waste: recycling.

(1) Existing law requires the Department of Toxic Substances Control to adopt regulations to prohibit an electronic device from being sold or offered for sale in this state if the electronic device is prohibited from being sold in the European Union on and after its date of manufacture, due to the presence of certain heavy metals. Existing law requires the department to exclude certain electronic devices from that prohibition and prohibits the department from adopting any regulations that impose any requirements or conditions that are in addition to, or more stringent than, the requirements and conditions expressly authorized by that prohibition. A violation of the hazardous waste control law is a crime.

This bill would delete the requirement regarding the presence of heavy metals as a condition for a device being prohibited from being sold in the European Union. The bill would revise the conditions under which the department may exclude a device from that prohibition, based on compliance with specified requirements or exemptions. The bill would allow the department to impose a requirement or condition that is in addition to, or more stringent than, the requirements and conditions expressly authorized by that prohibition, if the department makes a specified determination. The bill would also allow the department to impose an additional requirement, if the requirement provides a manufacturer with a

method of simultaneously complying with that prohibition and other requirements. Since a violation of the department's regulations would be a crime, the bill would impose a state-mandated local program by creating a new crime.

(2) Existing law, the Electronic Waste Recycling Act of 2003, requires a person who exports covered electronic waste, or a covered electronic device intended for recycling or disposal, to a foreign country, or to another state for ultimate export to a foreign country, to comply with specified notification requirements and make specified demonstrations, including a demonstration with regard to management of the waste in accordance with the decisions and implementing guidelines of the Organization for Economic Cooperation and Development.

This bill would repeal those requirements and would instead require a person who exports covered electronic waste to a foreign country, or to another state for ultimate export to a foreign country, to submit certain notifications to the department at least 60 days prior to export. The bill would also require a person who exports a covered electronic device intended for recycling, to a foreign country, or to another state for ultimate export to a foreign country, to notify the department, as specified. The bill would also make conforming changes.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 25214.10 of the Health and Safety Code
- 2 is amended to read:
- 3 25214.10. (a) For purposes of this section, "electronic
- 4 device" has the same meaning as a "covered electronic device,"
- 5 as defined in Section 42463 of the Public Resources Code.
- 6 (b) The department shall adopt regulations, in accordance with
- 7 this section, that prohibit an electronic device from being sold or
- 8 offered for sale in this state if the electronic device is prohibited

1 from being sold or offered for sale in the European Union on and  
2 after its date of manufacture, to the extent that Directive  
3 2002/95/EC, adopted by the European Parliament and the  
4 Council of the European Union on January 27, 2003, and as  
5 amended thereafter by the Commission of European  
6 Communities, prohibits that sale ~~due to the presence of certain~~  
7 ~~heavy metals.~~

8 (c) The regulations adopted pursuant to subdivision (b) shall  
9 take effect January 1, 2007, or on or after the date Directive  
10 2002/95/EC, adopted by the European Parliament and the  
11 Council of the European Union on January 27, 2003, takes effect,  
12 whichever date is later.

13 (d) The department shall exclude, from the regulations  
14 adopted pursuant to this section, the sale of an electronic device  
15 ~~that contains a substance that is used if the device would~~  
16 ~~otherwise be prohibited from sale pursuant to subdivision (b)~~  
17 ~~solely due to the presence of one or more substances that are~~  
18 ~~either used in the device to comply with the federal or state~~  
19 ~~consumer, health, or safety requirements that are required by the~~  
20 ~~Underwriters Laboratories, the federal government, or the state~~  
21 ~~or are exempted by the European Union under Directive~~  
22 ~~2002/95/EC or by the Technical Adaptation Committee of the~~  
23 ~~European Union.~~

24 (e) In adopting regulations pursuant to this section, the  
25 department may not require the manufacture or sale of an  
26 electronic device that is different than, or otherwise not  
27 prohibited by, the European Union under Directive 2002/95/EC,  
28 adopted by the European Parliament and the Council of the  
29 European Union on January 27, 2003.

30 (f) (1) ~~The~~ (A) *Except as provided in subparagraphs (B) and*  
31 *(C), the department may not adopt any regulations pursuant to*  
32 *this section that impose any requirements or conditions that are*  
33 *in addition to, or more stringent than, the requirements and*  
34 *conditions expressly authorized by this section.*

35 (B) *The department may adopt a requirement or condition that*  
36 *the department determines to be necessary to implement and*  
37 *enforce this section.*

38 (C) *The department may adopt a requirement or condition to*  
39 *implement this section in a manner that is consistent with a*  
40 *European Union member country's requirements adopted*

1 pursuant to Directive 2002/95/EC, if the requirement or  
2 condition provides a manufacturer with a method of complying  
3 with this section and simultaneously complying with that  
4 country's requirements.

5 (2) In complying with this subdivision, the department shall  
6 use, in addition to any other information deemed relevant by the  
7 department, the published decisions of the Technical Adaptation  
8 Committee and European Union member states that interpret the  
9 requirements of Directive 2002/95/EC.

10 SEC. 2. Section 42476.5 of the Public Resources Code is  
11 amended to read:

12 ~~42476.5. A person who exports covered electronic waste, or a~~  
13 ~~covered electronic device intended for recycling or disposal, to a~~  
14 ~~foreign country, or to another state for ultimate export to a~~  
15 ~~foreign country, shall do all of the following— submit the~~  
16 ~~applicable notifications required by Sections 66273.20,~~  
17 ~~66273.40, and 66273.90 of Title 22 of the California Code of~~  
18 ~~Regulations to the department at least 60 days prior to export. A~~  
19 ~~person who exports a covered electronic device intended for~~  
20 ~~recycling to a foreign country, or to another state for ultimate~~  
21 ~~export to a foreign country, shall, at least 60 days prior to export:~~  
22 ~~notify~~

23 ~~(a) Notify the department of the destination, disposition,~~  
24 ~~contents, and volume of the waste, or device intended for~~  
25 ~~recycling or disposal to be exported, and include with the~~  
26 ~~notification the demonstrations required pursuant to subdivisions~~  
27 ~~(b) to (c), inclusive.~~

28 ~~(b) Demonstrate that the waste or device is being exported for~~  
29 ~~the purposes of recycling or disposal.~~

30 ~~(c) Demonstrate that the importation of the waste or device is~~  
31 ~~not prohibited by an applicable law in the state or country of~~  
32 ~~destination and that any import will be conducted in accordance~~  
33 ~~with all applicable laws. As part of this demonstration, required~~  
34 ~~import and operating licenses, permits, or other appropriate~~  
35 ~~authorization documents shall be forwarded to the department.~~

36 ~~(d) Demonstrate that the exportation of the waste or device is~~  
37 ~~conducted in accordance with applicable United States or~~  
38 ~~applicable international law.~~

39 ~~(e) (1) Demonstrate that the waste or device will be managed~~  
40 ~~within the country of destination only at facilities whose~~

1 ~~operations meet or exceed the binding decisions and~~  
2 ~~implementing guidelines of the Organization for Economic~~  
3 ~~Cooperation and Development for the environmentally sound~~  
4 ~~management of the waste or device being exported.~~

5 ~~(2) The demonstration required by this subdivision applies to~~  
6 ~~any country of destination, notwithstanding that the country is~~  
7 ~~not a member of the Organization for Economic Cooperation and~~  
8 ~~Development.~~

9 SEC. 3. Section 42476.6 of the Public Resources Code is  
10 repealed.

11 ~~42476.6. Section 42476.5 does not apply to a component part~~  
12 ~~of a covered electronic device that is exported to an authorized~~  
13 ~~collector or recycler and that is reused or recycled into a new~~  
14 ~~electronic component.~~

15 SEC. 4. Section 42479 of the Public Resources Code is  
16 amended to read:

17 42479. (a) (1) For covered electronic waste collected for  
18 recycling on and after January 1, 2005, the board shall make  
19 electronic waste recovery payments and electronic waste  
20 recycling payments for the collection and recycling of covered  
21 electronic waste to an authorized collector or covered electronic  
22 waste recycler, respectively, upon receipt of a completed and  
23 verified invoice submitted to the board by the authorized  
24 collector or recycler in the form and manner determined by the  
25 board.

26 (2) To the extent authorized pursuant to Section 42477, a  
27 covered electronic waste recycler shall make the electronic waste  
28 recovery payments to an authorized collector upon receipt of a  
29 completed and verified invoice submitted to the recycler by the  
30 authorized collector in the form and manner determined by the  
31 board.

32 (b) An e-waste recycler is eligible for a payment pursuant to  
33 this section only if the e-waste recycler meets all of the following  
34 requirements:

35 (1) The e-waste recycler is in compliance with applicable  
36 requirements of ~~Article 6 (commencing with Section 66273.70)~~  
37 ~~of Chapter 23 of Division 4.5 of Title 22 of the California Code~~  
38 ~~of Regulations.~~

39 (2) The e-waste recycler demonstrates to the board that any  
40 facility utilized by the e-waste recycler for the handling,

1 processing, refurbishment, or recycling of covered electronic  
2 devices meets all of the following standards:

3 (A) The facility has been inspected by the department within  
4 the past 12 months and had been found to be operating in  
5 conformance with all applicable laws, regulations, and  
6 ordinances.

7 (B) The facility is accessible during normal business hours for  
8 unannounced inspections by state or local agencies.

9 (C) The facility has health and safety, employee training, and  
10 environmental compliance plans and certifies compliance with  
11 the plans.

12 (D) The facility meets or exceed the standards specified in  
13 Chapter 1 (commencing with Section 1171) of Part 4 of Division  
14 2, Division 4 (commencing with Section 3200), and Division 5  
15 (commencing with Section 6300), of the Labor Code or, if all or  
16 part of the work is to be performed in another state, the  
17 equivalent requirements of that state.

18 SEC. 5. No reimbursement is required by this act pursuant to  
19 Section 6 of Article XIII B of the California Constitution because  
20 the only costs that may be incurred by a local agency or school  
21 district will be incurred because this act creates a new crime or  
22 infraction, eliminates a crime or infraction, or changes the  
23 penalty for a crime or infraction, within the meaning of Section  
24 17556 of the Government Code, or changes the definition of a  
25 crime within the meaning of Section 6 of Article XIII B of the  
26 California Constitution.